

10:5-5

LEGISLATIVE HISTORY CHECKLIST

(Employment discrimination--social clubs and religious organizations)

HJSA 10:5-5

LAWS OF 1977

CHAPTER 122

Bill No. S1608

Sponsor(s) Lipman & Wiley

Date Introduced July 22, 1976

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate State Gov't, Federal & Interstate Relations & Veterans Affairs.

Amended during passage Yesx No

Date of Passage: Assembly May 26, 1977

Senate January 24, 1977

Date of approval June 6, 1977

Following statements are attached if available:

| | | | |
|-------------------------------|--------------------|----------------|-------|
| Sponsor statement | Yes | Yes | Below |
| Committee Statement: Assembly | Yes | No | |
| Senate | Yes | Yes | |
| Fiscal Note | Yes | No | |
| Veto Message | Yes | No | |
| Message on signing | YES Yes | Yes | |

Following were printed:

| | | |
|----------|----------------|----|
| Reports | Yes | No |
| Hearings | Yes | No |

Statement:

This bill will clarify some ambiguity in the present Law Against Discrimination. It will limit the present exemption from the provisions concerning employment discrimination to those cases where no governmental policy would be served by governmental regulation; specifically, in cases of purely private social clubs and of religious organizations whose tenets require certain employment practices.

DEPOSIT COPY

CHAPTER 122 LAWS OF N. J. 1977
APPROVED 6-6-77

SENATE, No. 1608

STATE OF NEW JERSEY

INTRODUCED JULY 22, 1976

By Senators LIPMAN and WILEY

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT to amend the "Law Against Discrimination," approved
April 16, 1945 (P. L. 1945, c. 169).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 5 of P. L. 1945, c. 169 (C. 10:5-5) is amended to read
2 as follows:

3 5. As used in this act, unless a different meaning clearly appears
4 from the context:

5 a. "Person" includes one or more individuals, partnerships, asso-
6 ciations, organizations, labor organizations, corporations, legal
7 representatives, trustees, trustees in bankruptcy, receivers, and
8 fiduciaries.

9 b. "Employment agency" includes any person undertaking to
10 procure employees or opportunities for others to work.

11 c. "Labor organization" includes any organization which exists
12 and is constituted for the purpose, in whole or in part, of collective
13 bargaining, or of dealing with employers concerning grievances,
14 terms or conditions of employment, or of other mutual aid or
15 protection in connection with employment.

16 d. "Unlawful employment practice" and "unlawful discrimina-
17 tion" includes only those unlawful practices and acts specified in
18 section 11 of this act.

19 e. "Employer" **[does not include a club exclusively social or a**
20 **fraternal, charitable, educational or religious association or corpo-**
21 **ration, if such club, association or corporation is not organized and**
22 **operated for private profit;]** *includes all persons as defined in*
23 *subsection a. of this section unless otherwise specifically exempt*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

24 *under another section of this act, and includes the State, any*
25 *political or civil subdivision thereof, and all public officers, agencies,*
26 *boards or bodies.*

27 f. "Employee" does not include any individual employed by his
28 parents, spouse or child, or in the domestic service of any person.

29 g. "Liability for service in the Armed Forces of the United
30 States" means subject to being ordered as an individual or member
31 of an organized unit into active service in the Armed Forces of the
32 United States by reason of membership in the National Guard,
33 naval militia or a reserve component of the Armed Forces of the
34 United States, or subject to being inducted into such armed forces
35 through a system of national selective service.

36 h. "Division" means the "Division on Civil Rights" created by
37 this act.

38 i. "Attorney General" means the Attorney General of the State
39 of New Jersey or his representative or designee.

40 j. "Commission" means the Commission on Civil Rights created
41 by this act.

42 k. "Director" means the Director of the Division on Civil
43 Rights.

44 l. "A place of public accommodation" shall include, but not be
45 limited to: any tavern, roadhouse, hotel, motel, trailer camp, sum-
46 mer camp, day camp, or resort camp, whether for entertainment
47 of transient guests or accommodation of those seeking health, rec-
48 reation or rest; any producer, manufacturer, wholesaler, distrib-
49 utor, retail shop, store, establishment, or concession dealing with
50 goods or services of any kind; any restaurant, eating house, or place
51 where food is sold for consumption on the premises; any place
52 maintained for the sale of ice cream, ice and fruit preparations or
53 their derivatives, soda water or confections, or where any beverages
54 of any kind are retailed for consumption on the premises; any
55 garage, any public conveyance operated on land or water, or in the
56 air, any stations and terminals thereof; any bathhouse, boardwalk,
57 or seashore accommodation; any auditorium, meeting place, or hall;
58 any theatre, motion-picture house, music hall, roof garden, skating
59 rink, swimming pool, amusement and recreation park, fair, bowling
60 alley, gymnasium, shooting gallery, billiard and pool parlor, or
61 other place of amusement; any comfort station; any dispensary,
62 clinic or hospital; any public library; any kindergarten, primary
63 and secondary school, trade or business school, high school, acad-
64 emy, college and university, or any educational institution under

65 the supervision of the State Board of Education, or the Commis-
66 sioner of Education of the State of New Jersey. Nothing herein
67 contained shall be construed to include or to apply to any institu-
68 tion, bona fide club, or place of accommodation, which is in its nature
69 distinctly private; nor shall anything herein contained apply to any
70 educational facility operated or maintained by a bona fide religious
71 or sectarian institution, and the right of a natural parent or one in
72 loco parentis to direct the education and upbringing of a child under
73 his control is hereby affirmed; nor shall anything herein contained
74 be construed to bar any private secondary or post-secondary school
75 from using in good faith criteria other than race, creed, color,
76 national origin or ancestry, in the admission of students.

77 m. "A publicly assisted housing accommodation" shall include
78 all housing built with public funds or public assistance pursuant to
79 P. L. 1949, c. 300, P. L. 1941, c. 213, P. L. 1944, c. 169, P. L. 1949,
80 c. 303, P. L. 1938, c. 19, P. L. 1938, c. 20, P. L. 1946, c. 52, and P. L.
81 1949, c. 184, and all housing financed in whole or in part by a loan,
82 whether or not secured by a mortgage, the repayment of which is
83 guaranteed or insured by the Federal Government or any agency
84 thereof.

85 n. The term "real property" includes real estate, lands, tene-
86 ments and hereditaments, corporeal, and incorporeal, and lease-
87 holds, provided however, that, except as to publicly assisted housing
88 accommodations, the provisions of this act shall not apply to the
89 rental: (1) of a single apartment or flat in a two-family dwelling,
90 the other occupancy unit of which is occupied by the owner as his
91 residence or the household of his family at the time of such rental;
92 or (2) of a room or rooms to another person or persons by the
93 owner or occupant of a one-family dwelling occupied by him as his
94 residence or the household of his family at the time of such rental.
95 Nothing herein contained shall be construed to bar any religious or
96 denominational institution or organization, or any organization
97 operated for charitable or educational purposes, which is operated,
98 supervised or controlled by or in connection with a religious organi-
99 zation, in the sale, lease or rental of real property, from limiting
100 admission to or giving preference to persons of the same religion
101 or denomination or from making such selection as is calculated by
102 such organization to promote the religious principles for which it
103 is established or maintained.

104 o. "Real estate broker" includes a person, firm or corporation
105 who, for a fee, commission or other valuable consideration, or by
106 reason of promise or reasonable expectation thereof, lists for sale,

107 sells, exchanges, buys or rents, or offers or attempts to negotiate a
108 sale, exchange, purchase, or rental of real estate or an interest
109 therein, or collects or offers or attempts to collect rent for the use of
110 real estate, or solicits for prospective purchasers or assists or
111 directs in the procuring of prospects or the negotiation or closing
112 of any transaction which does or is contemplated to result in the
113 sale, exchange, leasing, renting or auctioning of any real estate, or
114 negotiates, or offers or attempts or agrees to negotiate a loan
115 secured or to be secured by mortgage or other encumbrance upon
116 or transfer of any real estate for others; or any person who, for
117 pecuniary gain or expectation of pecuniary gain conducts a public
118 or private competitive sale of lands or any interest in lands. In the
119 sale of lots, the term "real estate broker" shall also include any
120 person, partnership, association or corporation employed by or on
121 behalf of the owner or owners of lots or other parcels of real estate,
122 at a stated salary, or upon a commission, or upon a salary and com-
123 mission, or otherwise, to sell such real estate, or any parts thereof,
124 in lots or other parcels, and who shall sell or exchange, or offer or
125 attempt or agree to negotiate the sale or exchange, of any such lot
126 or parcel of real estate.

127 p. "Real estate salesman" includes any person who, for compen-
128 sation, valuable consideration or commission, or other thing of
129 value, or by reason of a promise or reasonable expectation thereof,
130 is employed by and operates under the supervision of a licensed real
131 estate broker to sell or offer to sell, buy or offer to buy or negotiate
132 the purchase, sale or exchange of real estate, or offers or attempts
133 to negotiate a loan secured or to be secured by a mortgage or other
134 encumbrance upon or transfer of real estate, or to lease or rent, or
135 offer to lease or rent any real estate for others, or to collect rents
136 for the use of real estate, or to solicit for prospective purchasers
137 or lessees of real estate, or who is employed by a licensed real estate
138 broker to sell or offer to sell lots or other parcels of real estate, at
139 a stated salary, or upon a commission, or upon a salary and com-
140 mission, or otherwise to sell real estate, or any parts thereof, in lots
141 or other parcels.

142 q. "Physical handicap" means any physical disability, infirmity,
143 malformation or disfigurement which is caused by bodily injury,
144 birth defect or illness including epilepsy, and which shall include,
145 but not be limited to, any degree of paralysis, amputation, lack of
146 physical coordination, blindness or visual impediment, deafness or
147 hearing impediment, muteness or speech impediment or physical

148 reliance on a seeing eye dog, wheelchair, or other remedial ap-
149 pliance or device.

1 2. Section 11 of P. L. 1945, c. 169 (C. 10:5-12) is amended to
2 read as follows:

3 11. It shall be unlawful employment practice, or, as the case
4 may be, an unlawful discrimination:

5 a. For an employer, because of the race, creed, color, national
6 origin, ancestry, age, marital status or sex of any individual, or
7 because of the liability for service in the Armed Forces of the
8 United States, of any individual, to refuse to hire or employ or to
9 bar or to discharge from employment such individual or to dis-
10 criminate against such individual in compensation or in terms, con-
11 ditions or privileges of employment; provided, however, it shall
12 not be an unlawful employment practice to refuse to accept for
13 employment an applicant who has received a notice of induction or
14 orders to report for active duty in the armed forces; provided
15 further that nothing herein contained shall be construed to bar an
16 employer from refusing to accept for employment any person on
17 the basis of sex in those certain circumstances where sex is a bona
18 fide occupational qualification, reasonably necessary to the normal
19 operation of the particular business or enterprise; *provided further*
20 *that it shall not be an unlawful employment practice for a club*
21 *exclusively social or fraternal to use club membership as a uniform*
22 *qualification for employment, or for a religious association or*
23 *organization to utilize religious affiliation as a uniform qualifica-*
24 *tion in the employment of clergy, religious teachers or other em-*
25 *ployees engaged in the religious activities of the association or*
26 *organization, or in following the tenets of its religion in establish-*
27 *ing and utilizing criteria for employment of an employee.*

28 b. For a labor organization, because of the race, creed, color,
29 national origin, ancestry, age, marital status or sex of any
30 individual, or because of the liability for service in the Armed
31 Forces of the United States, of any individual, to exclude or to
32 expel from its membership such individual or to discriminate in
33 any way against any of its members, against any applicant for, or
34 individual included in, any apprentice or other training program
35 or against any employer or any individual employed by an em-
36 ployer; provided, however, that nothing herein contained shall be
37 construed to bar a labor organization from excluding from its ap-
38 prentice or other training programs any person on the basis of sex
39 in those certain circumstances where sex is a bona fide occupational

40 qualification reasonably necessary to the normal operation of the
41 particular apprentice or other training program.

42 c. For any employer or employment agency to print or circulate
43 or cause to be printed or circulated any statement, advertisement
44 or publication, or to use any form of application for employment,
45 or to make an inquiry in connection with prospective employment,
46 which expresses, directly or indirectly, any limitation, specification
47 or discrimination as to race, creed, color, national origin, ancestry,
48 age, marital status or sex or liability of any applicant for employ-
49 ment for service in the Armed Forces of the United States, or
50 any intent to make any such limitation, specification or discrim-
51 ination, unless based upon a bona fide occupational qualification.

52 d. For any person to take reprisals against any person because
53 he has opposed any practices or acts forbidden under this act or
54 because he has filed a complaint, testified or assisted in any proceed-
55 ing under this act.

56 e. For any person, whether an employer or an employee or not,
57 to aid, abet, incite, compel or coerce the doing of any of the acts
58 forbidden under this act, or to attempt to do so.

59 f. For any owner, lessee, proprietor, manager, superintendent,
60 agent, or employee of any place of public accommodation directly
61 or indirectly to refuse, withhold from or deny to any person any
62 of the accommodations, advantages, facilities or privileges thereof,
63 or to discriminate against any person in the furnishing thereof,
64 or directly or indirectly to publish, circulate, issue, display, post or
65 mail any written or printed communication, notice, or advertise-
66 ment to the effect that any of the accommodations, advantages,
67 facilities, or privileges of any such place will be refused, withheld
68 from, or denied to any person on account of the race, creed, color,
69 national origin, ancestry, marital status or sex of such person, or
70 that the patronage or custom thereof of any person of any par-
71 ticular race, creed, color, national origin, ancestry, marital status
72 or sex is unwelcome, objectionable or not acceptable, desired or
73 solicited, and the production of any such written or printed com-
74 munication, notice or advertisement, purporting to relate to any
75 such place and to be made by any owner, lessee, proprietor, super-
76 intendent or manager thereof, shall be presumptive evidence in
77 any action that the same was authorized by such person; provided,
78 however, that nothing contained herein shall be construed to bar
79 any place of public accommodation which is in its nature reasonably
80 restricted exclusively to individuals of one sex, and which shall
81 include but not be limited to any summer camp, day camp, or resort
82 camp, bathhouse, dressing room, swimming pool, gymnasium, com-

83 fort station, dispensary, clinic or hospital, or school or educational
84 institution which is restricted exclusively to individuals of one sex,
85 from refusing, withholding from or denying to any individual of
86 the opposite sex any of the accommodations, advantages, facilities
87 or privileges thereof on the basis of sex; provided further, that the
88 foregoing limitation shall not apply to any restaurant as defined in
89 R. S. 33:1-1 or place where alcoholic beverages are served.

90 g. For the owner, lessee, sublessee, assignee or managing agent
91 of, or other person having the right of ownership or possession of
92 or the right to sell, rent, lease, assign, or sublease any real property
93 or part or portion thereof, or any agent or employee of any of these:

94 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
95 to deny to or withhold from any person or group of persons any
96 real property or part or portion thereof because of the race, creed,
97 color, national origin, ancestry, marital status or sex of such person
98 or group of persons;

99 (2) To discriminate against any person or group of persons be-
100 cause of the race, creed, color, national origin, marital status
101 or sex of such person or group of persons in the terms, conditions
102 or privileges of the sale, rental or lease of any real property or part
103 or portion thereof or in the furnishing of facilities or services in
104 connection therewith; or

105 (3) To print, publish, circulate, issue, display, post or mail, or
106 cause to be printed, published, circulated, issued, displayed, posted
107 or mailed any statement, advertisement, publication or sign, or to
108 use any form of application for the purchase, rental, lease, assign-
109 ment or sublease of any real property or part or portion thereof,
110 or to make any record or inquiry in connection with the prospective
111 purchase, rental, lease, assignment, or sublease of any real prop-
112 erty, or part or portion thereof which expresses, directly or in-
113 directly, any limitation, specification or discrimination as to race,
114 creed, color, national origin, ancestry, marital status or sex or any
115 intent to make any such limitation, specification or discrimination,
116 and the production of any such statement, advertisement, publicity,
117 sign, form of application, record, or inquiry purporting to be made
118 by any such person shall be presumptive evidence in any action
119 that the same was authorized by such person; provided, however,
120 that nothing contained in this subsection shall be construed to bar
121 any person from refusing to sell, rent, lease, assign or sublease or
122 from advertising or recording a qualification as to sex for any room,
123 apartment, flat in a dwelling or residential facility which is planned
124 exclusively for and occupied by individuals of one sex to any in-
125 dividual of the exclusively opposite sex on the basis of sex.

126 h. For any real estate broker, real estate salesman or employee
127 or agent thereof:

128 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
129 sale, rental, lease, assignment, or sublease any real property or part
130 or portion thereof to any person or group of persons or to refuse
131 to negotiate for the sale, rental, lease, assignment, or sublease of
132 any real property or part or portion thereof to any person or group
133 of persons because of the race, creed, color, national origin, ances-
134 try, marital status or sex of such person or group of persons, or
135 to represent that any real property or portion thereof is not avail-
136 able for inspection, sale, rental, lease, assignment, or sublease when
137 in fact it is so available, or otherwise to deny or withhold any real
138 property or any part or portion or facilities thereof to or from any
139 person or group of persons because of the race, creed, color, national
140 origin, ancestry, marital status or sex of such person or group of
141 persons;

142 (2) To discriminate against any person because of his race, creed,
143 color, national origin, ancestry, marital status or sex in the terms,
144 conditions or privileges of the sale, rental, lease, assignment or
145 sublease of any real property or part or portion thereof or in the
146 furnishing of facilities or services in connection therewith; or

147 (3) To print, publish, circulate, issue, display, post, or mail, or
148 cause to be printed, published, circulated, issued, displayed, posted
149 or mailed any statement, advertisement, publication or sign, or
150 to use any form of application for the purchase, rental, lease,
151 assignment, or sublease of any real property or part or portion
152 thereof or to make any record or inquiry in connection with the pro-
153 spective purchase, rental, lease, assignment, or sublease of any real
154 property or part or portion thereof which expresses, directly or
155 indirectly, any limitation, specification or discrimination as to
156 race, creed, color, national origin, ancestry, marital status or sex
157 or any intent to make any such limitation, specification or discrim-
158 ination, and the production of any such statement, advertisement,
159 publicity, sign, form of application, record, or inquiry purporting
160 to be made by any such person shall be presumptive evidence in
161 any action that the same was authorized by such person; provided,
162 however, that nothing contained in this subsection h., shall be con-
163 strued to bar any person from refusing to sell, rent, lease, assign
164 or sublease or from advertising or recording a qualification as to
165 sex for any room, apartment, flat in a dwelling or residential facility
166 which is planned exclusively for and occupied exclusively by in-
167 dividuals of one sex to any individual of the opposite sex on the
168 basis of sex.

169 i. For any person, bank, banking organization, mortgage com-
170 pany, insurance company or other financial institution, lender or
171 credit institution to whom application is made for any loan or
172 extension of credit including but not limited to an application for
173 financial assistance for the purchase, acquisition, construction,
174 rehabilitation, repair or maintenance of any real property or part
175 or portion thereof or any agent or employee thereof:

176 (1) To discriminate against any person or group of persons
177 because of the race, creed, color, national origin, ancestry, marital
178 status or sex of such person or group of persons or of the prospec-
179 tive occupants or tenants of such real property or part or portion
180 thereof, in the granting, withholding, extending, modifying or
181 renewing, or in the fixing of the rates, terms, conditions or
182 provisions of any such loan, extension of credit or financial assist-
183 ance or in the extension of services in connection therewith; or

184 (2) To use any form of application for such loan, extension
185 of credit or financial assistance or to make record or inquiry
186 in connection with applications for any such loan, extension of
187 credit or financial assistance which expresses, directly or in-
188 directly, any limitation, specification or discrimination as to race,
189 creed, color, national origin, ancestry, marital status or sex or any
190 intent to make any such limitation, specification or discrimina-
191 tion; unless otherwise required by law or regulation to retain or
192 use such information.

193 j. For any person whose activities are included within the scope
194 of this act to refuse to post or display such notices concerning the
195 rights or responsibilities of persons affected by this act as the
196 Attorney General may by regulation require.

197 k. For any real estate broker, real estate salesman or em-
198 ployee or agent thereof or any other individual, corporation, part-
199 nership, or organization, for the purpose of inducing a transaction
200 for the sale or rental of real property from which transaction such
201 person or any of its members may benefit financially, to represent
202 that a change has occurred or will or may occur in the composition
203 with respect to race, creed, color, national origin, ancestry, marital
204 status or sex of the owners or occupants in the block, neighborhood
205 or area in which the real property is located, and to represent,
206 directly or indirectly, that this change will or may result in un-
207 desirable consequences in the block, neighborhood or area in which
208 the real property is located, including, but not limited to the low-
209 ering of property values, an increase in criminal or anti-social
210 behavior, or a decline in the quality of schools or other facilities.

1 3. This act shall take effect immediately.

STATEMENT

This bill will clarify some ambiguity in the present Law Against Discrimination. It will limit the present exemption from the provisions concerning employment discrimination to those cases where no governmental policy would be served by governmental regulation; specifically, in cases of purely private social clubs and of religious organizations whose tenets require certain employment practices.

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO
SENATE, No. 1608

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1976

This bill amends the "Law Against Discrimination," approved April 16, 1945 (P. L. 1945, c. 169) to eliminate an ambiguity in the provisions of the law concerning employment discrimination.

The definitions section of the statute, as it now stands, excludes a club which is exclusively social "or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized and operated for private profit," from the preview of the provisions pertaining to discrimination in employment.

The amendment to this law removes this "blanket" exemption and refines the language so that it will be lawful for a club which is exclusively social or fraternal to use club membership as a qualification for employment. It also makes it lawful for a religious association or organization to use the "tenets of its religion" in "establishing and utilizing criteria" for hiring an employee. Any other basis for selection is unlawful.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

JUNE 6, 1977

BEN BOROWSKY

Governor Brendan Byrne today signed two more civil rights bills into law. The Governor signed S-1606 and S-1608 this morning in the office of Newark Mayor Kenneth A. Gibson.

S-1606 permits any municipality with a population of at least 200,000 in a county of the first class to establish, by ordinance, an office of civil rights. However, this action must be approved by the Attorney General.

The director of such a municipal office would be appointed by the municipality but the qualifications of the director, hearings examiners and attorneys for such an office would be subject to the approval of the Attorney General.

At the present time, Newark and Jersey City would be eligible to establish civil rights offices.

The Attorney General may also delegate to these offices the power to conduct hearings to subpoena witnesses, administer oaths, take testimony and conduct discovery procedures. Findings and conclusions must be submitted to the Director of the Division of Civil Rights for final decision and disposition.

S-1608 deletes from the definition of "employer" in the Law Against Discrimination, the language which currently excludes from the definition social, fraternal, charitable, educational or religious associations or corporations not organized for profit.

The term "employer" is further specifically defined to include "the State, any political or civil subdivision thereof, and all public officers, agencies, boards of bodies."

Under this bill, club membership is permitted as an employment qualification where the club is exclusively social or fraternal.

The bill also permits religious associations to use religious affiliation as a qualification where required by religious tenets.

Governor Byrne said that these two new laws will "help New Jersey in the battle against discrimination."

Both bills were sponsored by Senators Wynona M. Lipman (D-Essex) and Stephen B. Wiley (D-Morris).
